



An  
Bord  
Pleanála

## Inspector's Report ABP 309376-21.

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| <b>Development</b>             | Part two storey and part single storey three bed detached house, pedestrian entrance gate, boundary railing and handrail to front and access through dual ownership driveway, off parking, storage and ancillary development. |
| <b>Location</b>                | No 16 Muckcross Green,<br>Kimmage, Dublin 12.   |
| <b>Planning Authority</b>      | South Dublin County Council   |
| <b>P. A. Reg. Ref.</b>         | D20A/0292   |
| <b>Applicant</b>               | Tim O'Sullivan and Louise<br>Prendergast.   |
| <b>Type of Application</b>     | Permission.   |
| <b>Decision</b>                | Grant Permission  |
| <b>Type of Appeal</b>          | Third Party   |
| <b>Appellant</b>               | Stephen and Jean Nowlan.  |
| <b>Date of Site Inspection</b> | 14 <sup>th</sup> May, 2021  |
| <b>Inspector</b>               | Jane Dennehy  |

## Contents

|   |    |
|---|----|
| 1.0 Site Location and Description ..... | 3  |
| 2.0 Proposed Development .....          | 3  |
| 3.0 Planning Authority Decision .....   | 3  |
| 3.1. Decision .....                     | 3  |
| 3.2. Planning Authority Reports .....   | 4  |
| 3.4. Third Party Observations .....     | 5  |
| 4.0 Planning History.....               | 5  |
| 5.0 Policy Context.....                 | 5  |
| 5.1. Development Plan.....              | 5  |
| 6.0 The Appeal .....                    | 6  |
| 6.1. Grounds of Appeal .....            | 6  |
| 6.2. Applicant Response .....           | 7  |
| 6.3. Planning Authority Response .....  | 8  |
| 7.0 Assessment.....                     | 8  |
| 8.0 Recommendation.....                 | 12 |
| 9.0 Reasons and Considerations.....     | 12 |
| 10.0 Conditions.....                    | 12 |

## **1.0 Site Location and Description**

- 1.1. The site which has a stated area of .05074 hectares, is formed from the side garden of an end of terrace, corner site two storey house with a single storey rear extension and is triangular in shape. The adjoining dwelling (No 17) to the south east side is perpendicular to No 16 Muckross Park and it also has a triangular shaped garden which shares a boundary with the application site on which there is a high block wall circa 1.8 metres in height.
- 1.2. Muckross Green, which is in the Perrystown area, off Whitehall Road comprises terraced houses located along four sides of a landscape green open space. There are access lanes to the rear of which there is access to entrances in the rear boundaries of most of the properties. However, the access lane to the rear of the properties on the north west side terminates at the rear boundary between Nos 14 and 15 Muckross Park.

## **2.0 Proposed Development**

- 2.1. The application lodged with the planning authority indicates proposals for the construction of a part two storey and part single storey three bed detached house on the application site. Vehicular access is to be provided through dual ownership driveway, shared with the existing dwelling at No 16 with provision for off street parking for both dwellings. Also included is a proposal for a pedestrian entrance gate, landscaping, bin storage and cycle storage at the front and drainage and ancillary works. The stated floor area for the proposed dwelling is 136 square metres.
- 2.2. The application includes auto-track analysis, a civil engineering report on existing and proposed site services and a traffic engineer's report.

## **3.0 Planning Authority Decision**

### **3.1. Decision**

By order dated, 15<sup>th</sup> January, 2021 the planning authority decided to grant permission.

Condition No 2 contains a requirement for a detailed landscaping plan to include tree survey details and proposals for removal, retention and replacement, a works specification which accords with the Councils Public Realm Section and a planting scheme.

Condition No 3 contains a requirement for the first-floor window in the east elevation to be fitted with obscure glazing.

Condition No 5 contains requirement for drainage calculations, in compliance with SUDS measures to be prepared and submitted for agreement.

Condition No 6 contains the requirement for separation of foul and surface water drawing. Condition No 7 is a standard condition for dishing of the footpath and kerb and its widening to the satisfaction of the planning authority and subject standard technical requirements. Under (d) the sharing of the parking area to the front by both dwellings, which is not to be subdivided, is required.

### 3.2. Planning Authority Reports

- 3.2.1. The report of the **Water Services** indicates a recommendation for an additional information request for calculations of surface water to be prepared and submitted to demonstrate compliance with the Greater Dublin Drainage Study (SUDS) (DGSDS) Vol 2-New Development and, a fully detailed revised surface water layout drawing.
- 3.2.2. The report of **Irish Water** indicates standard recommendations relating to the feasibility for connection to water supply and to foul drainage facilities. A request for Further information is recommended
- 3.2.3. The report of the **planning officer** indicates a recommendation for a grant of permission it being concluded that the revisions in the proposal satisfactorily address the issues arising in the prior proposal that were considered unsatisfactory. (P.A. Reg.Ref.SD20A / 0134, details of which are in section 4 below refers.)

### 3.3. Third Party Observations

- 3.3.1. An observation was lodged by the appellant parity in which issues of concern raised relate to ownership of and right of access over the laneway, storm water management, traffic issues backland development and precedent.
- 3.3.2. Observations were lodged by the occupants of Nos 5 and 12 Sheldon Park in which concerns is raised include risk of flooding, adverse visual impact relative to established pattern of development, excessive density in the area, loss of privacy, devaluation of property and increased traffic and potential precedent.

## 4.0 Planning History

**P.A. Reg.Ref.SD20A / 0134:** Permission was refused for construction of a part two storey and part single storey three bed detached house on the application site with rooflight, an entrance gateway and 2.1 m high boundary wall setback from the frontage. Access is to be provided through dual ownership driveway, landscaping, bin storage and cycle storage at the front and drainage and ancillary works based on three reasons:

1. Overbearing Impact on the adjoining property which is contrary to the Zoning Objective and which would seriously injure the residential amenity of property in the vicinity.
2. Endangerment of public safety by reason of traffic hazard due to the access width of 5.1 metres and intensification of use where there are reduced sightlines.
3. Insufficient detail on water supply, surface water and foul drainage arrangements.

## 5.0 Policy Context

### 5.1. Development Plan

The operative development plan is the South Dublin County Council Development Plan, 2016 – 2022 according to which the site is within an area subject to the zoning objective: *RES – To protect and improve residential amenities.*

Policy Objective H17 Objective 3 provides for favourable consideration of corner site or wide garden sites within established residential areas subject to the standards and criteria and in particular, section 11.3.2. (ii) within Chapter 11.

According to Section 11.3. (iii), for backland development a site analyses process for scale siting and layout should be followed. Piecemeal development adversely impacting on the character and pattern of development in the area should be avoided, single storey development should be close to the boundaries to prevent overlooking and overshadowing of adjoining residential properties and access for pedestrians and vehicles should be clearly legible and should promote where appropriate, mid-block connectivity.

Section 11.6.1 contains a requirement under (iii) for SUDS drainage systems to be incorporated in all development with the exception in some cases for installation of alternative measures as a last resort, at the discretion of the planning authority where SUDS may not be feasible.

## **6.0 The Appeal**

### **6.1. Grounds of Appeal**

6.1.1. An appeal was received from Stephen and Jean Nowlan of No 23 Sheldon Park on their own behalf on 8<sup>th</sup> February, 2021. This property is located to the rear of the application site. According to the appeal, having regard to section 11.3.2. (iii) of the CDP:

- There is a lack of site analysis of the impact and potential of the site to provide for better coordinated development and use of the laneway for access. The proposal sets precedent for uncoordinated, piecemeal backland development. There is no clear relationship with the existing development at Muckross Green and Sheldon Park and it is haphazard and piecemeal.
- The position of the proposed development at 1.5 metres from Nos 22 and 23 Sheldon Park results in overshadowing and overlooking of No 22 and where there is an upper floor window to the west and the private open space at Nos 23 and 24 Sheldon Park. The proposal conflicts with the policy for single storey development close to adjoin residential properties.

- The proposal results intensification of use of an access with reduced sightlines and is hazardous. There was insufficient analysis by the Roads Section which previously refused permission for a proposal on the site. (P. A. SD20A/134 refers.) There is investigation into an increase made to the width of the driveway so that it is four metres wide, without planning permission.
- The Parks department set conditions for the previous proposal as the area contained mature trees. (P. A. SD20A/134 refers.) A further report should have been provided for the current application before it was assessed. There are trees and hedgerow within a public access lane.
- The water attenuation system is not five metres from the appellant's outbuilding or three metres from the boundary of Nos 23 and 24 Sheldon Park. It is non-compliant with the SDCC Code of Practice.
- There is no supporting evidence to demonstrate that the planning authority should consider the application as an exceptional case allowing for an attenuation system as a last resort.
- The applicant has not provided evidence of legal interest with regard to the laneway which is required under Condition attached to the grant of permission under P.A. Reg. Ref. SD20A/134.

## 6.2. Applicant Response

6.2.1. A response to the appeal was received from the applicant's agent on 5<sup>th</sup> March, 2021 attached to which is a statement by the applicant. According to the appeal:

- The concerns of the appellant have already been addressed in the drawings and documentation prepared on behalf of the applicant and the purpose of the application was to address the issues raised in the planning officer's report on the previous unsuccessful proposal.
- The proposed position, scale and orientation are carefully considered and the access and parking arrangements for the existing and proposed dwelling were designed in consultation with the roads department at SDCC. A comprehensive design for the storm drainage was also provided.

- The proposed development of a dwelling in a high-quality design will contribute positively to the existing character of the area.
- According to the accompanying statement by the applicant:

There is no laneway at the rear of Nos 16 and 17 Muckcross Green.

The trees were assessed by a tree surgeon further to consultation with the occupant of No 22 Sheldon Park. As a result, due to their poor condition, some trees were felled. The trees referred to in the appeal do not exist.

The outbuilding referred to by the appellant, in connection with surface water drainage issues raised in the appeal is a Barna hut.

### 6.3. **Planning Authority Response**

There is no submission from the planning authority on file.

## 7.0 **Assessment**

The issues central to the determination of the decision having regard to the appeal can be considered under the following subheadings:

Rear Access Lane.

Dwelling Footprint, Form, Scale and Design

Precedent.

Public safety at the entrance and off-street parking

Trees and Landscaping.

Surface Water Drainage Arrangements including attenuation

Environmental Impact Assessment – Screening.

Appropriate Assessment.



## **7.1. Rear Access Lane.**

- 7.1.1. It is considered that it is clarified that no encroachment on or use of the lane at the rear of the properties on Muckcross Green and Sheldon Park is required. Based on visual inspection it can be confirmed that the lane terminates on the boundary between Nos 14 and 15 Muckcross Park, No. 15 being the adjoining property to No 16 Muckcross Park, the site being formed from side garden to its north east side.
- 7.1.2. However, in the event of further dispute regarding ownership and potential encroachment, the matter can be resolved through the legal process and it should be borne in mind that according to section 134. (13) of the Planning and Development Act, 2000 as amended, a grant of permission does not include, as of right entitlement to implement a grant of permission.

## **7.2. Dwelling Footprint, Form, Scale and Design**

- 7.2.1. There is a significant uniformity in terms of density, layout and dwelling typology which is unaltered throughout Muckcross Green and there are similar characteristics of residential development along surrounding roads including Sheldon Park the adjoining residential development to the north west and north east of the application site. As such, it is considered that it should be demonstrated in the drawing up of proposals for side garden/corner site development and their assessment of them that any potential for diminution of the established characteristics at Muckcross Green is avoided. In the case of the subject proposal, the proposed dwelling is well setback into the site behind the front building line and is in a form that is relatively secluded and does not interfere with the pattern and layout of two storey terraces of dwellings around the central green space. Simultaneously, a quality dwelling is achieved in which satisfactory standards of internal habitable accommodation and private open space are achieved in the proposal.
- 7.2.2. Subject to the inclusion of the condition, as attached to the planning authority decision, for obscure glazing to be fitted at the first-floor east elevation window, to ensure protection of the residential amenities of the adjoining property no other modifications are considered necessary. Inclusion also of a condition in which exempt development entitlements are removed is also recommended, to allow for further planning review in the event of consideration of possible future additional development on the site.

**7.3. Precedent:**

7.4. It is reasonable that due consideration be given to potential for precedent, given the long-established uniform characteristics of Muckcross Green. There are other corner sites in Muckcross Green where there are triangular shaped side gardens. While the proposed development, if permitted, may set a precedent in principle for consideration of side garden development, any possible future development on similar site would be subject to consideration on the individual merits of each specific proposal.

**7.5. Public safety at the entrance and off-street parking.**

7.5.1. With regard to the input of the Roads Department, it is considered reasonable to rely on the comments and recommendations in the report on the previous proposal, the purpose being primarily to establish whether the issues of concern have been addressed satisfactorily.

7.5.2. There is no dispute that an additional dwelling, resulting in a shared use of an entrance off the public road generates additional traffic and turning movements inward and outwards but this matter is not of particular concern, it is of note that only two parking spaces, one for each dwelling is to be provided with the shared front curtilage. However, it has been demonstrated that with the entrance width onto the public domain, on an angle, which is reduced to four metres, (from five in the previous proposal) is sufficient. It is also demonstrated in the submitted auto track analysis that vehicles can be turned within the curtilage to allow for access and egress in forward gear.

7.5.3. Given the Muckcross Green itself is in effect a cul de sac with no through traffic and that visually, the proposed arrangements are satisfactory, the acceptance of the proposed access arrangements by the planning authority is supported.

**7.6. Trees and Landscaping.**

7.6.1. It is considered that the remarks raised in the appeal as to mature trees in the public access lane are irrelevant whereas the felling and pruning works undertaken by a tree surgeon, in 2019, further to consultation with the occupant of No 22 Sheldon Park referred to in the applicant's response may clarify possible confusion.

7.6.2. It is considered reasonable for the planning officer to have relied on the comments and recommendations in the Parks Department's report on the previous proposal in assessing the current proposal. In this regard, the requirements recommended and required, by condition attached to the decision to grant permission are considerable. These requirements, subject to satisfactory implementation provide assurance as to the presentation and completion of the proposed development to high standards and as to the protection of the residential and visual amenities of the area.

#### **7.7. Surface Water Drainage Arrangements including attenuation**

7.7.1. The site location is within an established and fully serviced area. Although it is recommended in the report of the Water Services Decision, that additional information be requested for calculations of surface water to be prepared and submitted to demonstrate compliance with the Greater Dublin Drainage Study (SUDS) (DGSDS) Vol 2-New Development and for submission, a fully detailed revised surface water layout drawing it is considered reasonable that these matters be addressed by compliance with a condition. It is not apparent that positive consideration of the proposed development should be precluded on grounds that satisfactory proposals, arising from calculations for pre and post development scenarios, subject to attenuation if required, cannot be satisfactorily demonstrated.

#### **7.8. Environmental Impact Assessment – Screening.**

7.8.1. Having regard to the minor nature of the proposed development and its location in a serviced inner suburban area, removed from any sensitive locations or features, there is no real likelihood of significant effects on the environment. The need for environmental impact assessment can, therefore, be excluded at preliminary examination and a screening determination is not required.

#### **7.9. Appropriate Assessment.**

7.9.1. Having regard to the scale and nature of the proposed development and to the serviced inner suburban location, no Appropriate Assessment issues arise. The proposed development would not be likely to have a significant effect individually or in combination with other plans or projects on a European site.

## 8.0 Recommendation

In view of the foregoing, it is recommended that the decision to grant permission be upheld based on the reasons and considerations and the conditions which follow:

## 9.0 Reasons and Considerations

Having regard to the South Dublin County Council Development Plan, 2016-2022 according to which the site is located within an area subject to the zoning objective, RES: *'to protect and or improve the residential amenity'* it is considered that subject to compliance with the conditions set out below, the proposed development would not seriously injure the residential amenities of adjoining or the visual amenities of the area, would not endanger public safety by reason of traffic hazard, would not be prejudicial to public health, would not set undesirable precedent and would be in accordance with the proper planning and sustainable development of the area.

## 10.0 Conditions.

1. The development shall be carried out and completed in accordance with the plans and particulars lodged with the application, except as may otherwise be required in order to comply with the following conditions. Where such conditions require details to be agreed with the planning authority, the developer shall agree such details in writing with the planning authority prior to commencement of development and the development shall be carried out and completed in accordance with the agreed particulars.

**Reason:** In the interest of clarity.

2. The first-floor east elevation window shall be fitted with opaque glazing and shall not be non openable. Prior to the commencement of the development the applicant shall submit and agree in writing with the planning authority, revised plan, and elevation drawings.

**Reason:** In the interest of the residential amenities of adjoining property

3. The site shall be landscaped in accordance with a comprehensive scheme of landscaping which shall be submitted and agreed in writing with the planning authority. It shall include:
- Full survey detail of all existing trees with proposal for removal retention and replacement and protection during the construction stage.
  - A full works specification for hard and soft landscaping and a detailed planting scheme which includes water absorbing plants that contribute to absorption of surface water emanating within the site.
  - Any plants which die, are removed or become seriously damaged or diseased, following the completion of the development, shall be replaced within the next planting season with others of similar size and species, unless otherwise agreed in writing with the planning authority.

**Reason:** In the interest of visual and residential amenity and orderly development.

4. Water supply and drainage arrangements, including the attenuation and disposal of surface water, shall comply with the requirements of the planning authority for such works and services which shall include the following: Prior to the commencement of the development the applicant shall submit and agree with the planning authority; Details of surface water calculations for the proposed discharge (Qbar) rates and a 1:100 year attenuation volumes in compliance with the *Greater Dublin Strategic Drainage Study (GDSDS) Volume 2, New Development*. Values for Standard Average Annual Rainfall (SAAR) and for Standard Percentage Ratio (SPR) used for Qbar calculations

shall be included. The submission shall include a revised surface water layout with details of these requirements.

**Reason:** In the interest of public health and clarity.

6. The developer shall enter into water supply and wastewater connection agreements with Irish Water, prior to commencement of development.

**Reason:** In the interest of public health.

7. The front curtilage space shall not be subdivided and the proposed parking spaces and vehicular entrance shall be communal and shall serve the existing dwelling at No 16 Muckross Park and the proposed dwelling on a shared basis.

The boundary walls at the access points shall not exceed 0.9 metres and pillars and caps shall not exceed 1.2 metres in height. Gates shall be inward opening only.

The footpath and kerb shall be dished and widened and the dropped crossing shall be constructed at the applicant's expense to the satisfaction of the planning authority.

**Reason:** In the interest of public safety and the visual amenities of the area.

8. Details of the materials, colours and textures of all the external finishes to the proposed development, shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. Sample panels shall be erected on site for inspection by the planning authority in this regard.

**Reason:** In the interest of visual amenity.

9. Site development and building works shall be carried out only between the hours of 0700 to 1800 Mondays to Fridays inclusive, between 0800 hours to 1400 hours on Saturdays and not at all on Sundays and public holidays. Deviation from these times will only be allowed in exceptional circumstances where prior written approval has been received from the planning authority.

**Reason:** In order to safeguard the residential amenities of property in the vicinity.

10. The developer shall pay to the planning authority a financial contribution in respect of public infrastructure and facilities benefiting development in the area of the planning authority that is provided or intended to be provided by or on behalf of the authority in accordance with the terms of the Development Contribution Scheme made under section 48 of the Planning and Development Act 2000, as amended. The contribution shall be paid prior to commencement of development or in such phased payments as the planning authority may facilitate and shall be subject to any applicable indexation provisions of the Scheme at the time of payment. Details of the application of the terms of the Scheme shall be agreed between the planning authority and the developer or, in default of such agreement, the matter shall be referred to An Bord Pleanála to determine the proper application of the terms of the Scheme.

**Reason:** It is a requirement of the Planning and Development Act 2000, as amended, that a condition requiring a contribution in accordance with the Development Contribution Scheme made under section 48 of the Act be applied to the permission.

**Jane Dennehy**  
Senior Planning Inspector  
16<sup>th</sup> May, 2021.